

NATIONAL MEDIATION BOARD  
SPECIAL BOARD OF ADJUSTMENT NO. 925  
Case/Award No. 144

BURLINGTON NORTHERN RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Case/Award No. 144

On May 13, 1983 the Brotherhood of Maintenance of Way Employees (hereinafter the Organization) and the Burlington Northern Railroad Company (hereinafter the Carrier) entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 925 (hereinafter the Board).

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railway Labor Act. The Board's jurisdiction was limited to disciplinary disputes involving employees dismissed from service. On September 28, 1987 the parties expanded the jurisdiction of the Board to cover employees who claimed that they had been improperly suspended from service or censured by the Carrier.

Although the Board consists of three members, a Carrier Member, an Organization Member and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railway Labor Act.

Employees in the Maintenance of Way craft or class who have been dismissed or suspended from the Carrier's service or who have been censured may chose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an

expedited decision. An employee who is dismissed, suspended or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedure.

The Agreement further establishes that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of his/her desire for expedited handling of his/her appeal, the Carrier Member shall arrange to transmit one copy of the notice of investigation, the transcript of investigation, the notice of discipline and the disciplined employee's service record to the Referee. These documents constitute the record of proceedings and are to be reviewed by the Referee.

In the instant case, this Board has carefully reviewed each of the above-described documents prior to reaching findings of fact and conclusions. Under the terms of the Agreement the Referee, prior to rendering a final and binding decision, has the option to request the parties to furnish additional data; including argument, evidence, and awards.

The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified or set aside, will determine whether there was compliance with the applicable provisions of Schedule Rule 40; whether substantial evidence was adduced at the investigation to prove the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof in terms of guilt.

### Background Facts

Mr. Terry Lee Todd, hereinafter the Claimant, entered the Carrier's service as a Grinder Operator on April 3, 1973. The Claimant was subsequently promoted to the position of Welder and he was occupying that position when he was censured by the Carrier on September 18, 1992.

The Claimant was censured as a result of an investigation which was held on August 20, 1992 in the Roadmaster's Office in St. Joseph, Missouri. At the investigation the Claimant was represented by the Organization. The Carrier censured the Claimant based upon its findings that he had violated Rules 1 and 564 which resulted in his personal injury on Monday, July 13, 1992.

### Findings and Opinion

The Claimant was censured as a result of his having slipped and fallen on July 13, 1992. The Claimant, as a Welder, was required to determine whether the condition of his sand was wet or dry. The sand was, apparently, located in a box on a carrier rack which had been installed in the flatbed of the Claimant's truck, and the rack was at a height of some seven to eight feet above the ground. The Claimant, apparently, attempted to scale height needed to determine the condition of the sand by climbing from the flatbed of the truck and using the carrier rack as support. The Claimant testified that after he checked the sand and retrieved a fire extinguisher he slipped as he was descending, because, apparently, "I stepped down and put my foot on something, I think it was a crucible lead which was on top of the crucible, and lost my footing and fell backward".

The record is filled with much evidence regarding the Organization's contention that the truck operated by the Claimant was not sufficiently configured to give an employee, such as the Claimant, ready and safe access to the supplies positioned on the carrier rack; and that the flatbed of this model truck was not sufficiently large to accommodate, safely, all of the equipment welders are required to carry.

The Carrier has filled the record with substantial evidence seeking to establish that the Claimant could have taken a safer course of action had he stepped upon the truck's running board, which was either eight or eighteen inches above ground level [there is some substantial dispute regarding the height, the width, and the strength of the running board], and sought to determine the condition of the sand using that facility.

The Chairman of the Board cannot determine from the photographs of the truck, because they are so poor in quality whether, in fact, there was a safer course of action for the Claimant to follow in checking the condition of the sand. There seems to be some merit in the Organization's contention that a welder could not stand on the running board of the truck and retrieve/lift a heavy object from the carrier rack without violating the Carrier's requirements regarding "proper lifting procedures".

However, the Claimant was not engaged in a "heavy lift". He climbed in the flatbed of the truck to check on his supplies and while retrieving the fire extinguisher "he slipped". The Claimant did not slip because another employee began to move the

truck and he did not slip because the truck was hit and jostled by another vehicle. He slipped, apparently, because he did not ensure, as he was descending, safe footing. Accordingly, it is this Board's opinion, that the Carrier had the right to charge him for this act of carelessness, and therefore the claim will be denied.

The Carrier might wish to consider implementing a system, which would ensure that there were safe procedures for welders who had to secure, or batten down, or lift or check upon materials on carrier racks in the flatbed of their trucks.

Award: The claim is denied in accordance with the above findings. This Award was signed this 20th day of April, 1993.

Richard R. Kasher

Richard R. Kasher  
Chairman and Neutral Member  
Special Board of Adjustment No. 925